

ADVANCE TEXT

FEC TROOP INFORMATION BULLETIN NO. 18

10/22/53

"YOU AND THE JAPANESE LAW"

OGC Has Reviewed

FACTS BEHIND THE NEW AGREEMENT

The NATO Status of Forces Agreement, which was closely followed in drawing up the new agreement with Japan, gave a large degree of criminal jurisdiction over our forces to the NATO nations.

This transfer of authority was believed to have a direct bearing on the success of NATO itself. It was recognized that there could be no effective action for joint European defense against Communism unless we respected the sovereignty of the various nations in the North Atlantic Treaty Organization. The U.S. Senate ratified the NATO Agreement on July 23, 1953, and it became effective on August 23, 1953.

It was logical that Japan, also a partner in defense against Communism, and a sovereign nation, should expect that we would make a similar agreement with her.

Successful negotiations, based on the NATO agreement and its interpretations, were held between the U.S. and Japan in August and September. The new agreement was signed September 29, 1953, and becomes effective in Japan on October 29, 1953. It revises Article XVII of the original Administrative Agreement between Japan and the U.S., which went into effect April 28, 1952.

This new section places United States Armed Forces personnel, the civilian component, and dependents in the most favorable position possible within the limitations of the earlier NATO Agreement. Both jurisdiction agreements were considered necessary by our government for a strong mutual defense against Communism.

I. THE AGREEMENT ON CRIMINAL JURISDICTION APPLIES TO ALL U.S. SECURITY FORCES PERSONNEL.

One of the most important features of our daily life here in Japan is the U.S. - Japanese Administrative Agreement, which came into effect when the occupation of Japan ended.

This agreement provides the basic rules under which we live and work in harmony with the Japanese people. It is this agreement which allows us to have tax-free PX articles, our military post offices, and many other privileges not usually enjoyed by other foreign residents in Japan. The purpose of the agreement is to establish a means by which we can live side by side with the Japanese without friction and misunderstanding.

By mutual agreement, and to increase the good will between the two nations, one part of this agreement has now been changed. Formerly, only U.S. military courts could try and punish members of the U.S. Security Forces for violations of the law. Now, in some cases, the Japanese courts also have that right.

Only a very small percentage of the U.S. forces ever become connected with or involved in criminal activities. Nevertheless, it is the responsibility of every man and woman to know the new rules of arrest, trial and punishment. Only by being fully informed on the rules of conduct can we continue to earn the faith and respect of the Japanese people which is necessary to accomplish our mission here.

The Administrative Agreement, and consequently the new rules on jurisdiction, apply to these people:

Members of the United States Armed Forces--all personnel on active duty when they are in Japan.

The Civilian Component--civilian persons of United States Nationality in the employ of, serving with, or accompanying the U.S. Armed Forces in Japan.

(Persons who have both U.S. and Japanese nationality, but who are brought to Japan by the U.S. Armed Forces, are also included.)

Dependents--generally, wife or husband and children under 21.

II. THE AUTHORITY OF THE MILITARY COURTS AND MILITARY POLICE IS NOT CHANGED.
IF YOU BREAK A U.S. MILITARY LAW YOU CAN BE TRIED BY A U.S. MILITARY COURT.

One thing is NOT changed by the new rules. All members of the U.S. Security Forces are still subject to U.S. military laws and regulations wherever they are in Japan. The person who violates such laws and regulations will be arrested by the Military Police, and tried by a U.S. court martial.

Under the new rules the violator may be tried by court martial AFTER he has appeared in a Japanese court, but the fact remains that he is always subject to military authority when he breaks a military law or regulation.

The United States and Japan now have two kinds of jurisdiction, or authority, over U.S. personnel. One kind is "exclusive", which means that in some cases only one of the two nations has authority.

The other kind is "primary", or first, which means that in some other cases one nation has the first right to put on trial and punish an offender. It may, however, give up this right to the other nation, which has second authority.

Our government keeps exclusive authority over the Security Forces for all offenses which are punishable under our law, but not under Japanese law.

Usually these will be the so-called "military offenses", such as being AWOL, desertion, disrespect towards a superior officer, etc. Such offenses, of course, relate only to military service. They are not crimes under Japanese law, and in these cases the Japanese authorities can take no part.

For example, Private John Doe goes to Kyoto on a three-day pass. He overstays his leave, and returns to duty several days late. In the eyes of the military law he has been AWOL and is subject to a court martial.

However, the offense of being absent without leave is not included in Japanese law, and Private Doe cannot be brought to trial in a Japanese court.

In addition, the U.S. has exclusive authority over personnel committing offenses against the SECURITY of the United States. This would include treason, sabotage and espionage against America, and violations of laws relating to official secrets of our government.

If Private Doe, while in Kyoto, was caught passing secret U.S. government information to a Communist agent, for example, he would be subject only to a court martial. He could not be tried by the Japanese authorities.

III. IF YOU BREAK A JAPANESE LAW YOU CAN BE TRIED BY A JAPANESE COURT.

Obviously, many offenses such as robbery, murder, rape, assault, and drunken driving are covered by both U.S. military law and Japanese law. What happens then? Who arrests, investigates, confines, tries and punishes the person who has violated laws of both nations?

That depends on whether the U.S. or Japan has first authority in the case.

The U.S. has first authority over MILITARY AND CIVILIAN PERSONNEL who commit offenses while on official duty, or offenses solely against another Security Forces' member, or offenses involving only property of the U.S. or its personnel.

If Sergeant Harry Smith is driving from Tokyo to Yokohama on official business, and kills a Japanese pedestrian in a traffic accident, both the U.S. and Japanese authorities may investigate the circumstances, but the Sergeant is subject only to court martial. Unless proved otherwise, a certificate from the Sergeant's commanding officer will establish that he was on official duty.

Approved For Release 2006/10/05 : CIA-RDP58-00453R000100010021-0
If Airman Bill Jones gets mad at his friend and takes a poke at him, Airman Jones will be subject only to trial by court martial, because his offense involved only another member of the Security Forces. It would be the same thing if Airman Jones had knocked down a civilian with the Security Forces.

If Seaman Ted Brown steals a Navy blanket he is subject only to trial by court martial. His offense only involved U.S. government property. If Brown later stole another sailor's wrist watch while the two were on leave in Tokyo, it would still be the same case. His offense would only involve the property of another member of the Security Forces, and he would be subject only to trial by court martial.

There are three important things to remember about these cases where the U.S. has first authority:

- A. IT IS ALWAYS PERMISSIBLE FOR A JAPANESE POLICEMAN TO ARREST A MEMBER OF THE SECURITY FORCES.

The U.S. and Japan have agreed (and this is no change) that they will assist each other in the arrests of U.S. Security Forces members who are violating laws. The Military Police, however, have the right to maintain discipline in areas used by the U.S. Forces, and any arrests within our facilities will normally be made by them. However, in cases of "hot pursuit", or with permission of U.S. authorities, the Japanese police may apprehend an offender within our facilities.

- B. JAPAN MAY REQUEST THAT THE U.S. GIVE UP ITS FIRST AUTHORITY (primary jurisdiction) to try U.S. personnel - if the Japanese feel the case is of particular importance. The U.S. will give sympathetic consideration to this request.

- C. A SAFEGUARD IS ESTABLISHED FOR THOSE SPECIAL CASES WHERE THE U.S. has first authority. Once a person has been tried by court martial he cannot be tried again in the Japanese courts for the same offense.

When does Japan have first authority over those who break Japanese laws?

First, Japan has the authority over MILITARY AND CIVILIAN personnel in all cases except those mentioned above--crimes while on official duty, or crimes only against U.S. Forces personnel or property.

If a serviceman or a civilian is arrested for being drunk and disorderly in a Japanese bar, or if he knocks a taxi-driver on the head to steal a few hundred yen, he can be tried in the Japanese courts. If convicted and sentenced, he will be confined in a Japanese jail.

Second, Japan has first authority over DEPENDENTS in ALL violations of Japanese law. Dependents are NOT included in the special types of cases over which the U.S. has authority.

Suppose Mrs. Green--the wife of a civilian working for the Army--hits another automobile while she is driving down the Ginza, in Tokyo. Even though the car she hit is owned and driven by Corporal James, the Japanese courts have authority over Mrs. Green.

However, in these cases, the U.S. has the right to request that Japan give up its authority if the matter is of particular importance. Japan will give sympathetic consideration to these requests. In addition, there may be many cases where Japan simply decides not to exercise its authority for one reason or another.

A point to remember: It makes no difference if the Japanese law is broken while the person is within a U.S.-occupied area. Japan still has first authority. For instance, if a serviceman, or a civilian, or a dependent, should mistreat a Japanese workman in a U.S. housing area, he or she is subject to trial in the Japanese courts. The Military Police may arrest the person, because they are maintaining order there, but the trial will be in a Japanese court.

You can see that in such a case, the serviceman or civilian was not on official duty, and the offense did involve someone other than U.S. personnel, so he is in the same position as a dependent.

Our government and Japan will cooperate with each other in arrests, investigations, and the collection of evidence. If the Japanese arrest a person they will promptly notify the military authorities, and in most cases the U.S. will be given custody until the accused person has been formally charged by Japan. If the military authorities arrest a person for violation of Japanese law, they will hold him in custody until he has been charged by Japan.

As was pointed out earlier, every member of the U.S. Security Forces is still subject to military law in Japan at all times. This includes servicemen, civilians and dependents.

What this means is that it is possible for a person to be tried in a Japanese court for a violation of Japanese law, and later tried by court martial for a violation of military law, EVEN THOUGH THE VIOLATIONS OCCURRED BECAUSE OF THE SAME ACT.

If Lieutenant Black is picked up by the Japanese police for being drunk and disturbing the peace, he may be tried by a Japanese court. Let us suppose the Lieutenant is fined 5,000 yen. He can still be court-martialed for, among other things, conduct unbecoming an officer.

The same thing would be true for a traffic violation. If a Captain is stopped by the Japanese police for going 40 miles an hour in a 25 mile an hour zone, he will be liable to whatever punishment the Japanese authorities decide--probably a fine. This same Captain is still subject to military law for this offense, and he may have his driving license suspended for 15 days by the military authorities.

IV. IN JAPANESE COURTS, ACCUSED PERSONNEL HAVE RIGHTS

The big change for all Security Forces personnel, of course, is that we are all subject to trial in a Japanese court.

This is no cause for alarm. Japanese courts proceed much like our own. Members of the Security Forces who are prosecuted by Japanese authorities have the same rights as are guaranteed to all persons by the Japanese constitution, or provided by Japanese laws.

It is essential that you know of these rights, which include the following:

A. A person shall not be arrested or detained without being informed at once of the charge against him and without the privilege of counsel. A person shall not be detained without adequate cause. Upon the demand of any person, this cause must be presented immediately in open court.

B. A person is entitled to a prompt and speedy trial, and to be informed of the charges against him.

C. The accused shall get a public trial.

D. He shall be confronted with the witnesses against him, and shall have the means for obtaining witnesses in his favor, if they are in Japan. He shall not be forced to testify against himself, and he is permitted to examine all witnesses.

E. He may provide his own defense counsel, and if necessary, have an interpreter.

F. He will be allowed to communicate with a representative of the U.S. government, and he has the right to have a representative present at his trial.

G. He is not to be subjected to cruel punishments.

Our government authorities have the right at any time to talk with Security Forces members who are being held by the Japanese. If any member of the Security Forces is arrested and held by the Japanese police, he should immediately request that his Company Commander or the nearest Provost Marshal be notified.

As you will remember, the U.S. has the exclusive authority in the case of crimes not punishable under Japanese law. The same thing is true in reverse. Japan has the exclusive authority in the case of crimes which are not punishable under our laws.

In case of hostilities in the Japan area, either nation may suspend the provisions of this jurisdiction agreement upon 60 days' notice.

V. IN GENERAL, IF YOU OBEY ALL U.S. LAWS YOU ARE OBEYING JAPANESE LAWS

It is a mistake to believe that because we are now subject to trial by Japanese courts there are many new and strange laws to obey.

Japanese laws are virtually the same as ours, and we have always been subject to Japanese laws.

Ever since the Peace Treaty became effective, and Japan became an independent, sovereign nation, she has had the right to make and enforce her own laws. We have respected these laws, and we have punished the violators. Because the laws are so similar to ours, many people have not been aware that at all times in Japan we have been subject to both military and Japanese law.

The only difference now is we have agreed, with a few exceptions, that Japan has the right to enforce and to punish those who violate her laws.

This transfer of authority is not sudden. It was anticipated at the time the Administrative Agreement was drawn up (1952). It was stated then that when court authority over U.S. personnel was transferred to the nations of the North Atlantic Treaty Organization, such an arrangement would be made with Japan. This new agreement, similar to that already in effect with NATO, is effective as of October 29, 1953.

This decision is in complete accord with our recognition of Japan as an independent nation, and as a friendly partner in our defense against Communism.

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- II. THE AUTHORITY OF THE MILITARY COURTS AND MILITARY POLICE IS NOT CHANGED. IF YOU BREAK A U.S. MILITARY LAW YOU CAN BE TRIED BY A U.S. MILITARY COURT.
- III. IF YOU BREAK A JAPANESE LAW YOU CAN BE TRIED BY A JAPANESE COURT, UNLESS THE VIOLATION WAS COMMITTED:
 - A. ON OFFICIAL DUTY
 - B. SOLEY AGAINST PERSONNEL OR PROPERTY OF THE U.S. SECURITY FORCES.
- IV. IN JAPANESE COURTS, ACCUSED PERSONNEL HAVE THE RIGHT TO:
 - A. A PROMPT AND SPEEDY TRIAL
 - B. BE INFORMED OF THE CHARGES
 - C. BE CONFRONTED BY ACCUSERS AND WITNESSES
 - D. CROSS*EXAMINE WITNESSES
 - E. CALL DEFENSE WITNESSES
 - F. HAVE DEFENSE COUNSEL AND INTERPRETERS
 - G. COMMUNICATE WITH THE U.S. GOVERNMENT
 - H. HAVE A REPRESENTATIVE OF U.S. GOVERNMENT PRESENT AT HIS TRIAL
- V. IN GENERAL, IF YOU OBEY ALL U.S. LAWS YOU ARE OBEYING JAPANESE LAWS.

(Reproduced by TI&E Section, Camp Tokyo, APO 500, on 13 October 1953)